

CHAPTER 22
Zoning

22.20 Adult Oriented Establishments

(Rep. & recr. #66-01)

WHEREAS it is the intention of the Common Council of the City of Waukesha to enact regulations for the purpose of promoting health, safety, and general welfare of its citizens and,

WHEREAS pursuant to the City of Waukesha's authority, it is the intent of the Common Council to adopt by ordinance regulations restricting a location of adult-oriented establishments as defined herein to promote the City of Waukesha's interest in protecting and preserving the quality of its neighborhoods, commercial districts, and quality of urban life through effective land-use planning; and

WHEREAS it has been the experience of other cities including Seattle and Renton, Washington and Detroit, Michigan that adult-oriented establishments can contribute to the impairment of the character and quality of a surrounding residential neighborhood; contribute to a decline in the value of surrounding properties which in turn could have a detrimental effect upon a tax incremental financing district located within the Central Business District; and

WHEREAS adult-oriented establishments in proximity to residential areas, churches, parks, and schools may lead to an increase in criminal activities in the surrounding areas and the City desires to protect the youth of the community from the deleterious effects such businesses can have on adjacent areas by restricting their close proximity to places of worship, schools and residential areas; and

WHEREAS studies conducted in other communities across the United States such as St. Paul and Minneapolis, MN, Indianapolis, IN, Hilton Head, SC, Austin, TX, Phoenix, AZ and Los Angeles, CA have documented that the secondary effects of adult oriented establishments affect property values, contribute to physical deterioration and blight, have a deleterious effect on both existing business around them and surrounding areas, including increased transiency, increased levels of criminal activities including prostitution, rape, assaults and other sex related crimes; and

WHEREAS the Common Council believes that the experiences and studies from other communities set forth herein are relevant in addressing the secondary effects adult oriented establishments can have upon areas surrounding such establishments in the City of Waukesha; and

WHEREAS a reasonable regulation of the location of adult entertainment establishments will provide for the protection of the image of the community and its property values and protect the residents of the community from the adverse secondary effects of an adult-oriented establishment, while providing to those who desire to patronize adult-oriented establishments, such an opportunity in areas within the city which are appropriate for a location of adult-oriented establishments; and

CHAPTER 22

Zoning

22.20 Adult Oriented Establishments

WHEREAS the United States Supreme Court in the case of City of Renton vs. Playtime Theaters, Inc., 475 US 41, 106 S. Ct., 925, 89 L. Ed., 2d, 29 (1986) and Young vs. American Mini Theaters, 427 US 50, 96 S. Ct., 2440, 49 L. Ed., 2d, 310 (1976) have approved efforts by local governments to regulate the location of adult-oriented establishments through land use plans; and

WHEREAS the Common Council of the City of Waukesha conducted a public hearing on January 4, 1990 and January 16, 1990 and heard testimony from proponents and opponents of the proposed ordinance. Therefore, the Plan Commission has recommended the adoption of the proposed ordinance as an amendment to our existing zoning code; and

WHEREAS the proposed ordinance serves a substantial government interest and does not unreasonably limit alternative avenues of communication.

NOW, THEREFORE, the Common Council of the City of Waukesha, Waukesha County, Wisconsin do ordain as follows:

(1) DEFINITIONS:

- a. "Adult Oriented Establishment." Any premises required to be licensed under Section 8.195 including, but not limited to, "adult bookstores", "adult motion picture theatres", "adult mini-motion picture establishments", or "adult cabarets." It further means any premises to which public patrons or members are invited or admitted and which are so physically arranged so as to provide booths, cubicles, rooms, compartments or stalls separate from the common area of the premises for the purposes of viewing adult oriented motion pictures, or wherein an entertainer provides adult entertainment to a member of the public, a patron or a member, whether or not such adult entertainment is held, conducted, operated, or maintained for a profit, direct or indirect. "Adult Oriented Establishment" further includes without being limited to any "adult entertainment studio" or any premises that is physically arranged and used as such whether advertised or represented as an adult entertainment studio, rap studio, exotic dance studio, encounter studio, sensitivity studio, modeling studio, or any other term of like import.
- b. "Adult Bookstore" An establishment having as a substantial or significant portion of its stock-in-trade for sale, rent, lease, inspection or viewing books, films, video cassettes, magazines or other periodicals which are distinguished or characterized by their emphasis on matters depicting, describing or relating to "specified anatomical areas" or "specified sexual activities" as defined below, or an establishment with a section or segment devoted to the display and the sale, rental, or leasing of such material.
- c. "Adult motion picture theater" means an enclosed building with a capacity of fifty (50) or more persons used for presenting materials distinguished or characterized by an emphasis on, matters depicting, describing or relating to "specified sexual

CHAPTER 22
Zoning

22.20 Adult Oriented Establishments

- activities", or "specified anatomical areas", as defined below, for observation by patrons therein.
- d. "Adult mini-motion picture theater" means an enclosed building with a capacity of less than fifty (50) persons used for presenting materials having as its dominant theme, or distinguished or characterized by an emphasis on, matters depicting, describing or relating to "specified sexual activities", or "specified anatomical areas", as defined below, for observation by patrons therein.
 - e. "Adult cabaret" means a cabaret which features topless dancers, strippers, male or female impersonators, or similar entertainers.
 - f. "Adult entertainment" means any exhibition of any motion pictures, live performance, display or dance of any type, which has as its dominant theme, or is distinguished or characterized by an emphasis on, any actual or simulated "specified sexual activities", or "specified anatomical areas", as defined below.
 - g. "Specified sexual activities" means simulated or actual:
 - 1. Showing of human genitals in a state of sexual stimulation or arousal
 - 2. Acts of masturbation, sexual intercourse, sodomy, bestiality, necrophilia, sadomasochistic abuse, fellatio or cunnilingus;
 - 3. Fondling or erotic touching of human genitals, pubic region, buttocks or female breasts.
 - h. "Specified anatomical areas" means:
 - 1. Less than completely and opaquely covered human genitals, pubic region, buttocks, and female breasts below the point immediately above the top of the areola;
 - 2. Human male genitals in a discernible turgid state, even if opaquely covered.
 - i. "Booth", "Room", or "Cubicle". Such enclosures as are specifically offered to the public or members of an adult-oriented establishment for hire or for a fee as part of a business operated on the premises which offers as part of its business the entertainment to be viewed within the enclosure; which shall include, without limitation, such enclosures; which shall include, without limitation, such enclosures wherein the entertainment is dispensed for a fee, but a fee is not charged for mere access to the enclosure. However, "booth," "room" or "cubicle" does not mean such enclosures that are private offices used by the owners, managers or persons employed on the premises for attending to the tasks of their employment, which enclosures are not held out to the public or members of the establishment for hire or for a fee or for the purpose of viewing entertainment for a fee, are not open to any persons other than employees; nor shall this definition apply to hotels, motels or other similar establishments licensed by the State of Wisconsin pursuant to Chapter 50 of the Wisconsin Statutes.

CHAPTER 22
Zoning

22.20 Adult Oriented Establishments

(2) LOCATION OF ADULT-ORIENTED ESTABLISHMENTS.

- a. In M-1 and M-2 Zoning Districts adult-oriented establishments shall not locate within 1000 feet of any public or private school, church or religious institution and shall not locate within 500 feet of a residential zone, public park or any other adult oriented establishment.
- b. Adult-Oriented Establishments as defined in paragraph (1) are prohibited in all zones except M-1 and M-2 zones.

(3) STANDARDS OF MEASUREMENT. The distances provided in this section shall be measured in a straight line without regard to intervening structures or objects from the closest point of the structure or portion of the structure occupied or proposed for occupancy by the adult-oriented establishment to the nearest point of the parcel of property or land use district boundary relined from which the proposed land use is to be separated.

(4) CONFORMANCE WITH CHAPTER. In all zones where adult-oriented establishments are permitted, all regulations and requirements of Chapter 22 must be met. Additionally, all provisions of the zoning district in which the establishment is located must also be met.

(5) SEVERABILITY. The sections of this ordinance are declared to be severable. If any section or portion thereof shall be declared by a decision of a court of competent jurisdiction to be invalid, unlawful or unenforceable, such decision shall apply only to the specific section or portion thereof directly specified in the decision and not effect the validity of all other provisions, sections or portions thereof directly specified in the decision and not effect the validity of all other provisions, sections, or portions thereof of the ordinance which shall remain in full force and effect.